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ARIZONA ATTORNEY GENERAL

October 9, 1984

Ms. Maxine McCarthy  
Executive Secretary  
Agricultural Employment  
Relations Board  
1937 West Jefferson, Building A  
Phoenix, Arizona 85009

Re: I84-143 (R84-155)

Dear Ms. McCarthy:

This letter is in response to your inquiry addressing whether the General Counsel to the Agricultural Employment Relations Board (Board) may serve as a hearing officer for the State of Arizona on personnel matters. It is our understanding that the Board's general counsel who is appointed by the Governor pursuant to A.R.S. § 23-1386.D serves in that capacity on a part-time basis. The general counsel who is the exclusive legal representative of the Board wishes to serve as a hearing officer for the Arizona Department of Administration in employee grievance proceedings.

It is our understanding that the Board's general counsel would not accept appointment as a hearing officer for any matter pertaining to the Board's employees. For this reason, we do not think that participation by the Board's attorney as a hearing officer would in and of itself violate Arizona's conflict of interest law. A.R.S. § 38-503 et seq.

We must also address whether your general counsel's service as a hearing officer would be prohibited by the common law doctrine of incompatibility of public offices. Under the common law doctrine of incompatibility of public offices, a

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public officer who accepts a second office which is incompatible with the first office automatically vacates the first office. Perkins v. Manning, 59 Ariz. 60, 122 P.2d 857 (1942). We have previously stated that there are two situations under this doctrine which would preclude a person from holding public office:

(1) When the duties of two positions are in conflict and (2) when it is physically impossible that two positions be held simultaneously by one person. Perkins v. Manning, 59 Ariz. 60, 122 P.2d 60 (1984); Colman v. Lee, 58 Ariz. 506, 121 P.2d 433 (1943).

Ariz. Atty. Gen. Op. 180-061.

The determination of whether two positions are incompatible rests upon the individual duties required of each position. As to the first prong of the incompatibility test, we have stated that the duties of the two positions would not be in conflict so long as the Board's general counsel does not participate as a hearing officer in any proceeding which involves the Board's employees.

In addressing the second prong of the incompatibility test, we note that the position of general counsel to the Board is a part-time position and that the hearing officer position is likewise a part-time position. Based upon these facts as we understand them, it would not be physically impossible for an individual to hold the two positions simultaneously. From our review, it appears that the duties of a hearing officer employed by the Department of Administration are not inherently incompatible with the duties of the general counsel to the Agricultural Employment Relations Board.

Sincerely,



BOB CORBIN  
Attorney General

BC:SMS:mch